IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

THURSDAY, THE 8TH FEBRUARY 2007 / 19TH MAGHA 1928

CRL.A.No. 106 of 2000(A)

AGAINST JUDGMENT DATED 31/01/2000 IN
SC.55/1997 of SESSIONS COURT, KOZHIKODE

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APPELLANT:

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1. BIJU @ RISHIKES,
S/O.BALAKRISHNA PANICKER,
PERUVAYAL AMSOM,
CHERUKULATHUR DESOM.

2. KOMALAM @ KOMALAVALLY,
W/O.BALAKRISHNA PANICKER,
PERUVAYAL AMSOM,
CHERUKULATHUR DESOM.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS:

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1. STATE OF KERALA REP: BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM

2. SUB INSPECTOR OF POLICE,
KUNNAMANGALAM

BY PUBLIC PROSECUTOR, SRI PUZHAKKARA MUHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 08/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

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Crl. Appeal No. 106 of 2000 (B)

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Dated this the day of February, 2007

J U D G M E N T

The accused, three in numbers, faced the trial before the Sessions Court, Kozhikode, in Sessions Case No.55/1997, for the offence punishable under Sections 498A, 304B and 306 I.P.C read with Section 34 of the Indian Penal Code. On appreciation of the evidence, the sessions court found that accused 1 and 3, were guilty of the offence under Section 498A I.P.C read with Section 34 of the I.P.C. Therefore, both of them were convicted and sentenced thereunder to undergo rigorous imprisonment for a period of one year each, although, they were acquitted of the offence under Sections 304B and 306 I.P.C. The 2nd accused was acquitted of all the offence alleged against her. Therefore, accused 1 and 3 came up with this appeal, challenging the conviction and sentence, as above.

2. The brief facts required for the disposal of this appeal are that a young woman, Shiji, who was a B.Com student of the local college and a neighbour of the 1st accused, was attracted

towards the 1st accused. It ended in Shiji walking away from her house and registering her marriage with the 1st accused, on 30/06/1995. When Shiji did not come back as usual, PW.1 made enquiries and found that Shiji was in the house of the 1st accused. The 2nd accused is the sister of the 1st accused, and, the 3rd accused is the mother of both, accused 1 and 2. Though the life of Shiji and the 1st accused was pleasant in the initial period, the prosecution alleges that, after the marriage of the elder brother of the 1st accused, with DW.1, who brought home about 30 to 40 sovereigns of gold ornaments, there used to be a comparison between Shiji and DW.1. That ended in family feud, resulting in the assault and harassment of Shiji by the 2nd and 3rd accused. Shiji was complaining about this to PW.1, her mother. PW.1 discussed these matters with others, including PW.2, a relative of PW.1.

3. When the conduct of the accused became unbearable, Shiji ran away from her house. However, the 1st accused in a bike and, his brother in a jeep of PW.3, accompanied by PW.4, went in search of Shiji. She was located standing near the local panchayat office. She was taken forcibly in the jeep of PW.3. They took Shiji to the electrical shop of the father of the 1st accused.

There, the father assaulted the 1st accused. The 1st accused in turn assaulted Shiji. Thereafter, all of them took Shiji to the house of the accused. The prosecution alleges, through PW.4, that both accused 1 and 2, assaulted Shiji and also belittled her.

4. Because of the continuous cruelty perpetuated on Shiji, she poured kerosene oil and set fire to herself. She was taken to Medical College Hospital, Calicut. She succumbed to the burn injuries sustained by her, on 03/05/1996.

5. PW.1 made a complaint before the Kunnamangalam Police Station. Accordingly, investigation was conducted and final report filed against accused 1 to 3.

6. The prosecution examined 20 witnesses and marked 26 documents. Three material objects were also marked and identified. The Sessions Judge convicted accused 1 and 3 and sentenced them as above.

7. Though, the marriage between the deceased Shiji and the 1st accused was not according to the custom of the community, yet the same is not disputed by the defence. PW.5, the Sub Registrar of Mavoor Sub Registrar Office, was examined to prove the document through which the deceased Shiji and the 1st

accused have contracted their marriage. The ill-treatment on Shiji is spoken to by the prosecution through PWs.1 to 4. PW.1 is the mother of the deceased Shiji and PW.2 is the neighbour of the accused. PW.1 has got the information, only as informed to her by the deceased as well as others. There is no dying declaration recorded by the Magistrate although he visited the hospital but the victim was not fit to speak. PW.2 narrates certain incidents involving the accused 1 and 2, while the deceased was living in the house of the accused.

8. PW.3 is the driver in whose jeep, the brother of the first accused, along with PW.4 and others, travelled to trace out Shiji, when she left the house without informing them. As discussed earlier, they could trace out Shiji near the local panchayat office and brought her to the electrical shop of the father of the 1st accused. It was there the 1st accused assaulted her in front of others. There was also some incidents narrated while they were travelling back to house, in the jeep. But PW.3 had cautioned them, not to indulge any such activities in his jeep. However, certain incidents, on arrival in the house of the accused, are narrated by PW.3. PW.4 also spoke certain incidents after bringing Shiji back to

the house of the accused. Learned Sessions Judge, after appreciating the conduct of PW.4, did not accept some of the versions of PW.4. Nevertheless, the Sessions Judge had accepted the other portions of evidence of PW.4. There is nothing in law which prevents the court from accepting a portion of evidence of a prosecution witness, provided, the court is of the opinion that the same instils confidence. The materials on record show that PW.4 is related to the accused and also having some distant relationship with PW.1, as suggested by the defence.

9. The learned counsel for the appellant argued that as the Sessions Judge found that Sections 304B and 306 I.P.C are found not having committed by the accused, the findings of the court below under Section 498A I.P.C., in the circumstances of this case, is to be reappreciated, particularly, in the absence of any material, connecting the mother having assaulted the deceased. The counsel also further submitted that even according to PW.1, as spoken to her by her deceased daughter, Shiji, that whenever, Shiji was taken out of the house, Shiji was made to wear the gold ornaments of DW.1, so that the other relatives may not find fault with the defficiency of ornaments on Shiji. The counsel, therefore,

submitted that the 3rd accused always showed affection and love towards Shiji. Hence, the findings of the court below to the contrary, more so, when the 2nd accused, against whom many allegations of assault were made, had been acquitted, may not be sustained.

10. Though, PW.1 was on the side of the bed of the deceased Shiji, in the hospital, Shiji did not speak anything to PW.1 as to how the occurrence took place and what was the immediate cause of she immolating herself. Shiji had stated to PW.1 that she would speak to her on her return home from the hospital. But she died while in the hospital itself. The prosecution has brought to my notice the intervention of elder brother of the 1st accused, whenever Shiji attempted to speak to PW.1 while in hospital. In a criminal law mere suggestions or surmises are not sufficient to reach to a definite conclusions or inferences. Even PW.4 did not speak that the 3rd accused, the mother, had assaulted Shiji, when she was brought back from the panchayat office, after meeting the father of the 1st accused. It is in evidence through PW.4 that Shiji kept on saying that she did not like to reside in the house of the accused, but instead she was willing to have a separate residence for living

with the 1st accused. Although, the above statement of the victim may give rise to an inference, as discussed above, that she was facing harassment by the accused, this lone circumstance is not sufficient to come to a conclusion, attracting the explanation of cruelty, as stated in Section 498A of I.P.C., with regard to 3rd accused.

11. On disbelieving certain portions of depositions of PWs.2 and 4, the 2nd accused was acquitted. PW.4 deposed that it was the 2nd accused who had assaulted the deceased, when she was brought back to the house, along with the 1st accused. There is no medical documents to show that she had sustained any injuries as she had suffered 80% deep burn, involving neck, body, trunk and both limbs, as could be seen from Exhibit P9 wound certificate. Exhibit P10 postmortem certificate reveals that Shiji had died due to infective complications of burns.

12. When the injured Shiji was admitted to the hospital, Judicial Magistrate of the First Class, Kunnamangalam, was requested to record the dying declaration. Accordingly, on 02/05/1996, the learned Magistrate visited the hospital but the injured was under sedation, as informed to him by the Professor of

Surgery and Unit Chief. The Magistrate left the Bed No.27 of Ward No.23, after informing the Assistant Sub Inspector of Police Kunnamangalam, to inform the Magistrate, when the injured would regain consciousness. However, records show that the Magistrate was not informed and no dying declaration was recorded.

13. The evidence of PWs.3 and 4, particularly, in respect of the occurrence that took place near the panchayat office at Poovattuparamba and at Kuttikattoor, on the morning of 30/04/1996, is fully established. The court below, who had seen the witnesses and the accused in action, had disbelieved certain portions of PWs.2 and 4. There is no sufficient material on record, to show that the 3rd accused, the mother, is also involved in conducting such a manner, to make the deceased Shiji to commit suicide by pouring kerosene oil on her. Nevertheless, the materials available on record unequivocally show that the first accused was fully responsible and it was because of his conduct and cruelty that Shiji committed suicide. In such circumstances, I hold that the prosecution has not established or proved the case beyond the shadow of doubt, in respect of the 3rd appellant, the third accused, Komalam, the mother of the first accused. However, the

prosecution has established the case beyond the shadow of doubt under Section 498A I.P.C in respect of the 1st appellant, the 1st accused, Biju alias Rishikes, son of the 3rd accused. Therefore, the conviction and sentence of the 3rd accused, the 3rd appellant, Komalam, is set aside and she is set at liberty cancelling her bail bond. The conviction of the 1st appellant-1st accused is upheld.

14. Though section 498A I.P.C prescribes a punishment for a term which extends to three years and also shall be liable to fine, the lower court imposed a rigorous imprisonment for one year. The age of the 1st accused during the trial was 26 years. He had deposed at the time of hearing on the question of sentence that, he had aged father and mother and he may not be sent to jail. I have appreciated the entire facts and considered the circumstances under which the incident occurred. On reappreciation of the entire materials on record, I am of the opinion that a sentence of imprisonment for a period of three months with a fine of Rs.25,000/- (Rupees twenty-five thousand only) would meet the ends of justice.

15. In the result, the 1st accused is sentenced under Section 498A I.P.C to undergo rigorous imprisonment for three months. I also impose a fine of Rs.25,000/-, in default of which, the

1st accused shall undergo simple imprisonment for six months. If the fine amount is realised, the entire amount of Rs.25,000/- shall be paid to PW.1, the mother of the deceased Shiji, as compensation under Section 357(1) of Code of Criminal Procedure.

16. The court below is directed to issue a modified warrant to the 1st accused and shall take steps to execute the sentence against the 1st appellant, the 1st accused at the earliest. The warrant issued in respect of the 3rd appellant, the 3rd accused, shall be recalled.

The appeal is partly allowed as above. The 1st appellant is entitled for set off as per the law.

(J.M.JAMES)
Judge

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